

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

LORI FITZGERALD, *et al.*, individually and on
behalf of others similarly situated,

Plaintiffs,

v.

JOSEPH WILDCAT, SR., TRIBAL PRESIDENT
OF THE LAC DU FLAMBEAU BANK OF LAKE
SUPERIOR CHIPPEWA INDIANS, *in his official
and individual capacities, et al.*,

Defendants.

Civil Action No. 3:20-cv-44 (NKM)

**MEMORANDUM IN SUPPORT OF MOTION
FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY**

Plaintiffs, by counsel, pursuant to Local Rule 11(c) respectfully submit this brief in support of their Motion for Leave to File Supplemental Authority. In support thereof, Plaintiffs state as follows:

There is a pending tribal lending case in the United States District Court for the Eastern District of Virginia. *See generally Blackburn v. A.C. Israel Enterprises*, 2023 WL 4710884, at *1 (E.D. Va. July 24, 2023) (attached as Exhibit 1). In that case, the district court recently denied a set of motions to dismiss filed by various defendants who participated in “an allegedly unlawful short-term, payday lending operation” in violation of the Racketeer Influenced and Corrupt Organizations Act and state usury laws. *Id.* In seeking to dismiss the claims in *Blackburn*, those defendants made similar arguments as the Defendants in this case, such as that (1) the plaintiffs failed to adequately allege the existence of a RICO enterprise, (2) the defendants conduct did not rise to the level of operational or managerial control required to impose liability under § 1962(c),

and (3) plaintiffs failed to adequately allege an agreement to further the conspiracy objectives. *Id.* at *15-17, 28-33.

Given the similarities between the cases and issues, Plaintiffs request leave to submit the attached authority from *Blackburn*. Because it was unavailable when Plaintiffs submitted their briefing on these motions, good cause exists for leave to file this motion. *See Dennis v. Wells Fargo Bank, N.A.*, Case No. 2:11-cv-401 (MSD) (E.D. Va. Oct. 24, 2011) (Dkt. No. 29) (granting leave to file supplemental authority in the form of a court's hearing transcript that was not available at the time plaintiff's response was due); *Tucker v. U.S. Bank, N.A.*, Case No. 4:12-cv-69 (AWA) (E.D. Va. Nov. 28, 2012) (Dkt. No. 22) (granting leave to file supplemental authority by the author of treatise relied on by the defendant); *Green v. Prudential Life Ins. Co.*, Case No. 3:12-cv-882 (JAG) (E.D. Va. Mar. 11, 2013) (Dkt. No. 35); *Clark v. Trans Union*, Case No. 3:15-cv-00391 (MHL) (E.D. Va.) (Dkt. 64).

Accordingly, Plaintiffs respectfully move the Court for leave to file the supplemental authority attached hereto as Exhibit 1.

Respectfully submitted,
PLAINTIFFS

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